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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/064,958	09/04/2002	LeRoy William Nellis		7002

7590 12/28/2004

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EXAMINER

KEENAN, JAMES W

ART UNIT	PAPER NUMBER
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3652

DATE MAILED: 12/28/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/064,958	<b>Applicant(s)</b> NELLIS, LEROY WILLIAM	
	<b>Examiner</b> James Keenan	<b>Art Unit</b> 3652	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 12 October 2004.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 4-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 4-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12 October 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>10/12/04</u> . | 6) <input type="checkbox"/> Other: _____  |

1. The substitute specification filed 10/12/04 has not been entered because it is not apparent that it was necessary nor is it clear that it contains no new matter. While the previous Office action did object to the specification, nowhere did it state that a substitute specification was required. By completely rewriting the entire specification, it can not be readily compared to the original specification. In particular, it is noted that the original specification contained a statement that "There are no ... devices for lifting hot water heaters from floor to attic". There was no mention of the McGill et al patent, which was cited by the examiner and used in a rejection in the Office action. The substitute specification now includes a lengthy analysis and comparison of this patent, a clear indication that the substitute specification utilizes information not known to applicant at the time of filing. Such comments would seem to be appropriate in the remarks/arguments portion of applicant's response, rather than being included in the specification.
2. The drawings were received on 10/12/04. These drawings are not approved. Although the drawings themselves are not objectionable, they no longer correspond to the specification (again, it being noted that the substitute specification has not been entered).
3. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

4. Claims 4-20 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The recitation in claim 4 of a "first handle member" has no apparent support in the disclosure as originally filed. The only element which appears to meet the limitations of this feature is the "support arm 5", but it has not been identified as being a handle.

In claims 9-14, the various features of the support member and support strut appear to have no clear basis in the original disclosure. Although some of these features may be considered inherent in the alternative (e.g., the support strut may inherently be capable of either telescoping or folding, but not both), they are not individually inherent.

In claims 18 and 19, the recitation that the winches are "not manual" contradicts what is set forth in the specification, i.e., the winches are hand cranks.

In claim 20, the recitation of a "means for ... attaching" has no apparent support in the original disclosure.

5. Claims 4-20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 4, it is not clear to what element the "first handle member" refers.

In claim 7, there is no antecedent basis for "the handle receiver".

Claim 8 fails to further limit claim 4 from which it depends.

In claim 20, it is not clear to what element the "means for ... attaching" refers, and there is no antecedent basis for "the base surface".

6. Claims 4-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mortenson (US 5,207,439) in view of Rountree (previously cited).

Mortenson shows the invention essentially as claimed including main member F, base member 14, first handle member 16, axle assembly 11, support member 17, and support strut 24, 27.

Mortenson does not show a second handle member.

Rountree shows a similar hand truck with a handle member 22 extending perpendicular to the main frame member near the top edge thereof.

It would have been obvious for one of ordinary skill in the art at the time of the invention to have modified the dolly of Mortenson by adding a second handle member, as shown by Rountree, as this would provide enhanced operation.

Re claim 5, note brake assembly 41-46 of Rountree.

Re claim 6, although neither reference shows the feature as claimed, Rountree does show a means 31-32 for attaching a load to the base member. To have instead and/or additionally attached the load to the main member would have been a mere design expediency.

7. Claims 15-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mortenson in view of Rountree, as applied to claims 4-14 above, and further in view of McGill et al (previously cited).

The modified apparatus of Mortenson does not show a telescopic secondary member.

As noted in the previous Office action, McGill et al show a hand truck with telescopic frame 15' for lifting hot water heaters into an attic.

It would have been obvious for one of ordinary skill in the art at the time of the invention to have further modified the apparatus of Mortenson by utilizing a telescopic secondary frame, as shown by McGill et al, as this would enable objects to be lifted to a higher level.

8. Claim 17 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims. This applies only if the 112/1st paragraph rejection of claim 4 is overcome as well.

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

10. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.


11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to James Keenan whose telephone number is 703-308-2559. The examiner can normally be reached on Monday through Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eileen Lillis can be reached on 703-308-3248. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
James Keenan  
Primary Examiner  
Art Unit 3652

jwk  
12/15/04